

## **Notice of Proposed Rulemaking**

### **Title 2. Administration Division 7. Secretary of State Chapter 8.5. Business Entity Names**

#### **Proposal to Add 2 California Code of Regulations Sections 21000 through 21009 (Business Entity Names)**

Notice is hereby given that the Secretary of State intends to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

#### **Proposed Regulatory Action.**

The Secretary of State proposes the following regulatory action: Add provisions of 2 California Code of Regulations sections 21000 through 21009 to further implement, interpret or make specific provisions of Corporations Code sections 201, 2106, 5122, 7122, 9122, 12302, 13409, 15612, 15901.08, 15909.05 and 17052.

#### **Authority and Reference.**

Authority cited: Corporations Code sections 110, 201, 2106, 5008, 5122, 7122, 9122, 12214, 12302, 13409, 15612, 15693, 15901.08, 15909.05, 17052 and 17452.

Reference cited: Corporations Code sections Section 110, 201, 2101, 2106, 5008, 5122, 6910, 7122, 8910, 9122, 12214, 12302, 13409, 15612, 15613, 15693, 15901.08, 15901.09, 15909.05, 17052, 17053 and 17452.

#### **Informative Digest / Policy Statement Overview.**

The Secretary of State proposes to adopt Sections 21000 through 21009 in Title 2 of the California Code of Regulations, which would implement, interpret or make specific Corporations Code sections 201, 2106, 5122, 7122, 9122, 12302, 13409, 15612, 15901.08, 15909.05 and 17052. These sections concern the availability of business entity names for Corporations, Foreign Corporations, Limited Liability Companies, Foreign Limited Liability Companies, Limited Partnerships and Foreign Limited Partnerships.

These statutes require the Secretary of State to determine, prior to filing business entity documents, that a proposed business name is not the same as or too similar to the names of existing business entity names of record with the Secretary of State and that the business name is not misleading to the public. In the case of a limited partnership subject to the Uniform Limited

Partnership Act of 2008, the Secretary of State is required to determine that the proposed name is distinguishable on the record. The purpose of the proposed regulations is to interpret these statutes and provide guidelines for the public to use when selecting business entity names on documents that are filed with the Secretary of State.

Specifically, the Secretary of State proposes to amend 2 California Code of Regulations in the following respects:

- 1) Add Section 21000 to provide some rules of general application regarding items such as the use of alphabetic characters, numbers, fonts and symbols.
- 2) Add Section 21001 to define terms that are used in the regulations.
- 3) Add Section 21002 to interpret Corporations Code sections 201(b), 5122(b), 7122(c), 9122(b), 12302(b), 13409, 15612(c) and 17052(c) and provide guidelines relating to the names that are the same as an existing business entity name or that resemble an existing business entity name so closely as to tend to deceive.
- 4) Add Section 21003 to interpret Corporations Code sections 201(b), 5122(b), 7122(c), 9122(b), 12302(b), 13409, 15612(c) and 17052(c) and provide guidelines relating to names that are substantially similar to an existing business entity name.
- 5) Add Section 21004 to interpret Corporations Code sections 201(b), 5122(b), 7122(c), 9122(b), 12302(b), 15612(c) and 17052(c) and provide guidelines relating to the need for consent to use a name that is substantially similar to an existing business entity name.
- 6) Add Section 21005 to interpret Corporations Code sections 201(b), 5122(b), 7122(b), 7122(c), 9122(b), 12302(b), 13409, 15612(c) and 17052(c) and provide guidelines relating to business entity names that are likely to mislead the public.
- 7) Add Section 21006 to interpret Corporations Code sections 201(c), 5122(c), 7122(d), 9122(c), 12302(c), 13409, 15613 and 17053 relating to reserving business entity names that may require consent prior to filing.
- 8) Add Section 21007 to interpret Corporations Code sections 201, 5122, 7122, 9122, 12302, 15612, 15901.8, 15909.05 and 17052 and provide additional guidelines relating to proposed business entity names that are the same as an existing business entity name or that resemble an existing business entity name so closely as to tend to deceive.
- 9) Add Section 21008 to interpret Corporations Code sections 201, 5122, 7122, 9122, 12302, 15612, 15901.08 and 17052 and provide factors not considered when determining if a proposed business entity name is the same as an existing business entity name, resembles an existing business entity name so closely as to tend to deceive, or is distinguishable on the record.
- 10) Add Section 21009 to interpret Corporations Code section 15901.08 and to provide guidelines relating to the proposed names of limited partnerships governed by the Uniform Limited Partnership Act of 2008.

### **Public Hearing.**

The Secretary of State has not scheduled a public hearing on this proposed rulemaking. However, the Secretary of State will hold a hearing if it receives a written request for a public hearing from any interested person, or the interested person's authorized representative, no later than 15 days before the close of the written comment period. Any request for a public hearing should be sent within the time specified to the contact person indicated below.

### **Written Comment Period.**

Any interested person, or the interested person's authorized representative, may submit written comments relevant to the proposed regulatory action to the Secretary of State. The written comment period closes at 5:00 p.m. on December 15, 2008. The Secretary of State will consider only comments received at the Secretary of State's office by that time. Submit comments to:

Todd Vlaanderen, Senior Staff Counsel  
Secretary of State  
1500 11th Street, Third Floor  
Sacramento, CA 95814  
Telephone: 916-653-6244

### **Disclosures Regarding the Proposed Action.**

The Secretary of State has made the following initial determinations:

1. **Mandate on local agencies and school districts:** None.
2. **Cost or savings to any state agency:** None beyond that budgeted or expected to be budgeted for the Secretary of State.
3. **Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630:** None.
4. **Other nondiscretionary cost or savings imposed on local agencies:** None.
5. **Cost or savings in federal funding to the state:** None.
6. **Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states:** None.
7. **Cost impacts on a representative private person or businesses:** The Secretary of State anticipates negligible overall cost savings to private persons and businesses. These regulations will help persons and businesses better determine the availability of business entity names prior to filing their documents with the Secretary of State. This should result in fewer documents being rejected by the Secretary of State based on unavailable business entity names, which will save those individuals and businesses time and money.

**8. Adoption of these amendments will not:**

- (A) create or eliminate jobs within California;
- (B) create new businesses or eliminate existing businesses within California; or
- (C) affect the expansion of businesses currently doing business within California, although it may facilitate the conducting of business by providing businesses guidelines regarding the availability of proposed business entity names.

**9. Significant effect on housing costs:** None.

**10. Effect on small business:** None. The proposed amendments do not impose any mandatory fees on small businesses or require that any forms or reports be prepared or filed by any business. However, these amendments, if adopted, will help small businesses and other businesses to select business entity names with more certainty that the Secretary of State will accept the names.

**Consideration of Alternatives.**

In accordance with Government Code section 11346.5(a)(13), the Secretary of State must determine that no reasonable alternative has been identified that would be more effective in carrying out the purposes for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Secretary of State invites persons to present statements or arguments with respect to alternatives to the proposed amendments during the written comment period.

**Contact Persons.**

Inquiries concerning the proposed administrative action may be directed to:

Todd Vlaanderen, Senior Staff Counsel  
Secretary of State  
1500 11th Street, Third Floor  
Sacramento, CA 95814  
Telephone: 916-653-6244

The backup contact person for these inquiries is:

Edward S. Maxwell, Senior Staff Counsel  
Secretary of State  
1500 11th Street, Third Floor  
Sacramento, CA 95814  
Telephone: 916-653-6244

All inquiries regarding this proposed rulemaking, including requests for obtaining the Final Statement of Reasons, should be directed to Todd Vlaanderen at the address listed above.

**Availability of Statement of Reasons and Text of Proposed Regulations.**

The Secretary of State will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this Notice of Proposed Rulemaking, the regulations as proposed, and the Initial Statement of Reasons. The Initial Statement of Reasons includes the express terms of the proposed action and the information upon which the proposed action is based. Copies are posted on the Secretary of State's website at <http://www.ss.ca.gov/business> and may also be obtained from the contact person indicated above.

**Availability of Changed or Modified Text.**

After considering all timely and relevant comments received, the Secretary of State may adopt the proposed regulations substantially as described in this Notice of Proposed Rulemaking. If the Secretary of State makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Secretary of State adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the contact person indicated above. The Secretary of State will accept written comments on the modified regulations for 15 days after the date on which the modified regulations are made available.

**Availability of the Final Statement of Reasons.**

Upon completion, copies of the Final Statement of Reasons may be obtained from the contact person indicated above.

**Availability of Documents on the Internet.**

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the text of the proposed regulations in underline and strikeout can be accessed through the Secretary of State's website at <http://www.ss.ca.gov/business>. A copy of the Final Statement of Reasons will be posted on the website once the statement has been prepared.